



GENERAL SESSION

HAZARDOUS WASTE MANAGEMENT COMMISSION (HWMC)

December 15, 2004

9:30 A.M.

1738 East Elm Street

Bennett Springs/Roaring River Conference room
Jefferson City, Missouri 65102

COMMISSIONERS PRESENT

Ben Kessler, Chairman
Patrick Gleason, Vice-Chairman
Norella Huggins
Robert Saunders
Tim Warren

STAFF PRESENT

Ed Galbraith, Staff Director
Robbin Stout, Secretary to Commission
Shelley Woods, Counsel to the Commission

CALL TO ORDER

Ben Kessler, HWMC Chairman called the General Session to order at 9:30 A.M.

EXECUTIVE SESSION

An Executive Session was not held since there were no Executive Session Agenda Items.

APPROVAL OF MINUTES

Motion to approve the September 30, 2004, HWMC meeting minutes was made by Commissioner Gleason and seconded by Commissioner Huggins.

Motion carried and the minutes were approved.

HEARING AND RECOMMENDATION TO WITHDRAW THE DRYCLEANING ENVIRONMENTAL RESPONSE TRUST (DERT) FUND ORDERS OF RULEMAKING

Ken Koon, Brownfields Voluntary Cleanup, briefed the Commission of the results of the hearing held before the Joint Committee of Administrative Rules (JCAR) on the Order of Rulemaking for the DERT Fund on September 16, 2004. The JCAR introduced two motions:

1. To recommend disapproval of the rules or
2. To recommend that the HWMC send a letter to the General Assembly, that would be addressed to the Speaker and to the President Pro Tem, taking the statutory structure and moving those dates forward to keep that same five year time frame in place. This would change 2002 to 2007 on the rulemaking authority, 2007 to 2012 as the final date, etcetrera. allowing the Missouri Department of Natural Resources to come in and re-establish a set of rules.

Mr. Koon explained that the options open are to keep the rule in abeyance under Executive Order 97-97, or to withdraw the rule from the JCAR and the Secretary of State. He informed the Commission that the HWP thought the best course of action was to withdraw the DERT Fund orders of rulemaking, 10 CSR 25-17.010 to 10 CSR 25-17.170 at this time.

Chairman Kessler called the Public Hearing to order to hear testimony on this recommendation before the commission's vote.

Ed Galbraith, Director, HWP introduced Mr. Gary Marble, Associated Industries of Missouri, (AIM) to testify on behalf of industry. Mr. Marble spoke before the Commission in favor of the recommendation to withdraw the DERT Fund orders of rulemaking 10CSR 25-17.010 to 10 CSR 25-17.170 at this time. Chairman Kessler asked if there were anymore public testimonies, there were none.

Motion to close the Hearing was made by Commissioner Warren and seconded by Commissioner Gleason. A voice vote was taken. Motion carried and the Hearing was closed.

Motion to withdraw the DERT Fund orders of rulemaking 10CSR 25-17.010 to 10 CSR 25-17.170 was made by Commissioner Gleason and seconded by Commissioner Huggins. A discussion followed the motion to withdraw.

Shelley Woods, Attorney Generals Office, advised the Commission of the legal ramifications of approving or not approving the HWP's recommendation to withdraw the DERT Fund Orders of Rulemaking 10CSR 25-17.10 to 10 CSR 25-17.170. She suggested that the Commission go into Executive Session to discuss this since it was privileged communication between the government entity and its counsel, but also pointing out that it may be waived by the Commission and the matter be discussed in General Session. The Commission agreed to continue the discussion in open session. The discussion was continued in open session.

Ms. Woods described the procedural status of the rules pursuant to JCAR's action. The DERT Fund Orders of Rulemaking she explained, would remain in "limbo until the General Assembly resumes session and takes up JCAR's decision. She pointed out that if the General Assembly does not take up the JCAR's recommendation within 30 days then the rule automatically goes into effect. However, within that 30 day time period, the General Assembly may take it up and they may approve the recommendation to disapprove the rules. She pointed out that the Governor would still have the opportunity to review the decision of the General Assembly.

Ms. Woods pointed out to the Commission that by withdrawing the rules, they are bypassing the process that was set up and the ramification of not going through the process is that there is no guarantee the General Assembly will, in fact, follow through on its second recommendation. She suggested that the Commission direct staff to help the General Assembly remember that the JCAR made this recommendation, if the Commission does approve the HWP's recommendation. She said if the Commission does not approve the HWP's recommendation, the General Assembly may disapprove the rules anyway. Ms. Woods answered questions the Commissioners had regarding the approval/disapproval of withdrawing the DERT Fund Orders of Rulemaking.

Commissioner Huggins recommended that JCAR be taken at their word and that they would carry through with their decision. Commissioner Huggins pointed out that the JCAR only found fault with the DERT Fund Orders of Rulemaking because it failed to meet the timeline. Commissioner Huggins also pointed out that since the Stakeholders have already accepted the DERT Fund Orders of Rulemaking, it will proceed more quickly than it did the first time, even though it will have to start at the beginning.

Ed Galbraith, Director, HWP said that if there was a Consent Bill that had an emergency clause making it effective, a rule could then be filed and the process begun again immediately. He pointed out that even though the same six to eight month regulatory process would have to be followed, there would be no need for lengthy stakeholder meetings, making it possible to have a rule in place during the calendar year of 2005. Ken Koon informed the Commission stakeholder meetings had been reconvened offering opportunities to the public to discuss what is in the rules.

The result of the vote to withdraw the DERT Fund Order of Rulemaking is as follows:

Tim Warren	Yes
Norella Huggins	Yes
Robert Saunders	Yes
Pat Gleason	Yes
Ben Kessler	Yes

Motion carried and the DERT Fund Order of Rulemaking was withdrawn.

REFERRALS TO THE ATTORNEY GENERAL'S OFFICE (AGO)

Heather Markwell, Enforcement Section, requested that the following facilities be referred by the Commission to the AGO to compel compliance and pursue and negotiate a civil penalty:

- Lake Center Marina (ST0005288)
- Lazy Lee's (ST0013373)
- Lazy Lee's #12 (ST0013376)
- Lazy Lee's #11 (ST0013377)
- Lazy Lee's # 7 (ST0013380)
- Lazy Lee's # 10 (ST0013382)
- Lazy Lee's One Stop (ST0020920)
- Shalom Geriatric Center (ST0002351)

H&H Service (ST0018783) which was listed for referral was withdrawn because of additional information submitted addressing the violation.

Ed Galbraith, Director, HWP recommended that there be three motions: one for Lake Center Marina, one to include all of the Lazy Lee facilities and one for the Shalom Geriatric Center.

Motion to refer **Lake Center Marina** to the AGO in order to compel compliance and pursue and negotiate a civil penalty was made by Commissioner Gleason and seconded by Commissioner Saunders. Discussion followed as Ms. Markwell answered questions by the Commissioners assuring them that opportunities had been afforded the facility to avoid referral to the AGO.

The Commission voted as follows:

Tim Warren	Yes
Norella Huggins	Yes
Robert Saunders	Yes
Pat Gleason	Yes
Ben Kessler	Yes

Motion carried.

Motion to refer **Lazy Lee's Sites ST0013373, ST0013376, ST0013377, ST0013380, ST0013382 and ST0020920** to the AGO in order to compel compliance and pursue and negotiate a civil penalty was made by Commissioner Warren and seconded by Commissioner Saunders. Discussion followed as Ms. Markwell answered questions by the Commissioners assuring them that opportunities had been afforded the facilities to avoid referral to the AGO.

The Commission voted as follows:

Tim Warren	Yes
Norella Huggins	Yes
Robert Saunders	Yes
Pat Gleason	Yes
Ben Kessler	Yes

Motion carried.

Motion to refer the **Shalom Geriatric Center** to the AGO in order to compel compliance and pursue and negotiate a civil penalty was made by Commissioner Gleason and seconded by Commissioner Warren. Discussion followed as Ms. Markwell and Jeff Kuttenkuler, Enforcement, answered questions by the Commissioners assuring them that opportunities had been afforded the facility to avoid referral to the AGO.

The Commission voted as follows:

Tim Warren	Yes
Norella Huggins	Yes
Robert Saunders	Yes
Pat Gleason	Yes
Ben Kessler	Yes

Motion carried.

Shelley Woods, AGO suggested that in the future the motion read “pursue **or** negotiate a civil penalty” rather than “pursue and negotiate”, stating that sometimes there cannot be a negotiation and it has to be a judicial order.

UNDERGROUND STORAGE TANKS/ENFORCEMENT PRESENTATION

Heather Markwell, Enforcement Section, presented a general informational Power Point Presentation on Underground Storage Tank Issues. Ed Galbrain, Director, HWP explained to the Commission that this was to be an ongoing series of presentations to keep the Commission up to date on Tank Issues both in prevention and cleanup. Discussion followed and Ms. Markwell and Ed Galbraith, Director, HWP

answered the Commissioner's questions. Mr. Galbraith referred the Commission to the HWP Monthly Report for additional information.

TANKS RISK-BASED CORRECTIVE ACTION (RBCA) RULE UPDATE

John Balkenbush, Tanks Section Chief, presented an update on the Tanks RBCA Rule Update. Mr. Balkenbush gave a brief history of the Tanks RBCA Rule explaining that it remains in the transition phase in many ways involving sites previously started under the old guidance that work continues on to close. He explained that the focus of the update presented was using the new RBCA guidance. Mr. Balkenbush pointed out the status on ongoing risk assessments, showing that there is still a learning curve involving those in the HWP and the consultant community working with the RBCA. He projected an increase in numbers of "no further actions" as a result of increased awareness of the process and procedure of the RBCA guidance and clarification on the HWP's part. Mr. Balkenbush informed the Commission of the establishment, purpose and accomplishments of the Tanks Regulatory Development Group (TRDG) which is intended to address the remaining technical issues of the RBCA document and to help move toward rule promulgation. As a result of the TRDG the following has been established: the roles and responsibilities of the stakeholders, procedures for gathering informational feedback by the department and the definition of the basic expectations of what the RBCA rule should be composed of and what it should accomplish.

-There was a 10 minute break taken at this time.-

END OF THE YEAR REVENUES & EXPENSES FOR HWP FUNDS UPDATE

Ed Galbraith, Director, HWP provided the Commission with information and handouts regarding the yearly HWP funding income and expenses accounting figures and graphs showing the history of the fund balances and a projection of what is expected in the future.

Mr. Galbraith also pointed out how the HWP has been gathering and organizing data to demonstrate to the Interim Committee what the HWP does, who it serves and how the HWP benefits the citizens and that state of Missouri. He explained, using a graph, the impact the money the state invests and its return investment from federal expenditures. Mr. Galbraith also informed the Commission of the wide range of constituents' public testimony in support of the HWP and especially the Superfund effort. He pointed out the focus on looking for funding solutions and not just funding cuts. Commissioner Huggins added that the Interim Committee was encouraged not to go for a general revenue fix, explaining that to do so could possibly place jobs in jeopardy if based on a promise of general revenue. Mr. Galbraith, as the HWP Director concurred with Commissioner Huggin's but pointed out there were others in the business community that thought the general revenue fix would work.

MONTHLY REPORTS

Mr. Galbraith, Director, HWP discussed and answered Commissioner Huggin's questions regarding the Resource Conservation and Recovery Act of 1976 (RCRA) section in the Monthly Report, assuring the Commission that an effort was being made by the HWP to improve the area of RCRA performance reflected in the Monthly Report Pie Chart.

UPDATE ON COMMISSIONERS CORE WORKGROUP

Ed Galbraith, Director, HWP and Norella Huggins, Commissioner, HWMC gave an update on the Commissioner Core Workgroup. Mr. Galbraith referred the Commission to the updated September 2004

Regulatory Impact Report in their packets. He suggested that the Commission may want to make a motion to adopt the September 2004 Regulatory Impact Report. Commissioner Huggins pointed out that the September 2004 Regulatory Impact Report represents the necessary rewrite of the Regulatory Impact Report Policy which the HWMC passed six months ago which is now an appendix to the HWMC's Policy and Procedures Manual. Commissioner Huggins also reminded the Commissioners that they have had the report in their possession to review. Commissioner Huggins explained and answered questions the Commissioners had regarding the report.

Motion to adopt the September 2004 Regulatory Impact Report was made by Commissioner Huggins and seconded by Commissioner Saunders. A voice vote was taken.

Motion carried and the September 2004 Regulatory Impact Report was adopted.

Mr. Galbraith, Director, HWP presented a memo from Steve Mahfood, Director, Missouri Department of Natural Resources to Jim Werner, Director, Air and Land Protection and Scott B. Totten, Director, Water Protection and Soil Conservation Division, regarding Draft Appeal Procedures from Commissions to the Administrative Hearing Commission, (AHC). Mr. Galbraith suggested that the Commission review the memo and consider presenting their comments and suggestions at the next Commission meeting. Commissioner Huggins gave a brief history of the origin and need of the Draft Procedural Rules from Commissions to the AHC, reminding them that the Commissioner's Core Workgroup initiated these rules and of the timeline involved. She further explained that the Workgroup composed these rules as a means to help establish a uniform process by which the AHC could handle appeals from environmental commissions. Commissioner Huggins pointed out the possibility of bills being passed not only mandating that the AHC hearing the environmental appeals but also giving the AHC the authority to make the final decision on such appeals. She informed the Commission that if those bills were to pass then the rules that would apply would be the AHC existing rules, making the Workgroup's Draft Procedural Rules futile.

PUBLIC INQUIRIES OR ISSUES

Mr. Galbraith, Director, HWP asked those in attendance if there were any public inquiries or issues anyone wanted to discuss at this time. There were no public inquiries or issues presented.

OTHER BUSINESS

Ed Galbraith, Director, HWP raised the issues of Executive (closed) Session procedures in relationship to the Sunshine Law and the need to get these issues resolved so that there is a generally shared expectation about how that process should go forward. He proposed that Chairman Kessler appoint three Commissioners as an AD HOC Committee to meet with the AGO to establish recommendations for closed session procedures. Chairman Kessler called for three Commission members to serve on the

ad hoc Committee. Commissioners Gleason, Huggins and Warren agreed to serve on the Committee. Ed Galbraith offered to draft a letter requesting assistance from the AGO.

Commissioner Gleason moved that the Commission send a letter within the first quarter to the legislative leadership encouraging swift action on JCAR's motion to introduce legislation to extend the DERT Fund. Commissioner Warren seconded. A brief discussion followed and it was decided the letter would be for Chairman Kessler's signature. A voice vote was taken. Motion carried to have a letter drafted for Chairman Kessler's signature.

ADJOURNMENT

The meeting was adjourned.

FUTURE MEETINGS

Ed Galbraith asked the Commissioners to look over the 2005 HWMC Meeting schedule in their own time and contact Robbin Stout, HWMC Secretary if there were any conflicts with their individual calendars.

Respectfully Submitted,

Robbin Stout
Commission Secretary

APPROVED

Ben Kessler, Chairman

Date: _____